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**DISTRICT I**

August 27, 2025

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Charmian Klyve  
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Milwaukee, WI 53233-1803

Courtney L.A. Roelandts  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2024AP775

In re the termination of parental rights to D.F., a person under the  
age of 18: State of Wisconsin v. C.W. (L.C. # 2021TP255)

Before Colón, P.J.<sup>1</sup>

**Summary disposition orders may not be cited in any court of this state as precedent or  
authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Carl appeals from the order terminating his parental rights to David.<sup>2</sup> Based upon our  
review of the parties' submissions and record, we conclude that this case is appropriate for

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2023-24). All  
references to the Wisconsin Statutes are to the 2023-24 version.

<sup>2</sup> For ease of reading, we refer to the family in this confidential matter using pseudonyms. *See*  
WIS. STAT. RULE 809.19(1)(g).

summary disposition. *See* WIS. STAT. RULE 809.21(1). For the following reasons, we summarily affirm.

On November 9, 2021, the State filed a petition to terminate Carl’s parental rights to David. As grounds for the termination of parental rights (TPR), the State alleged that Carl abandoned Dominic pursuant to WIS. STAT. § 48.415(1)(1)2., David remained a child in need of protection or services pursuant to § 48.415(2) (continuing CHIPS), and Carl failed to assume parental responsibility pursuant to § 48.415(6). Carl contested the TPR petition and waived his right to a jury trial. After a two-day court trial, the circuit court found that the State had proven all three alleged grounds and then found Carl unfit.<sup>3</sup> The case then proceeded to the dispositional phase. The court heard additional evidence which it considered in light of the required statutory factors under WIS. STAT. § 48.426(3).<sup>4</sup> Ultimately the court found that the termination of Carl’s parental rights was in the best interests of David. Carl appeals.

On appeal, Carl’s sole argument is that WIS. STAT. § 48.426, the statutory scheme controlling the best interests determination in a TPR proceeding, is facially unconstitutional

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<sup>3</sup> TPR cases consist of two phases: a grounds phase to determine whether there are grounds to terminate a parent’s rights, and a dispositional phase, which determines whether termination is in the child’s best interest. *Sheboygan Cnty. DHHS v. Julie A.B.*, 2002 WI 95, ¶¶24-28, 255 Wis. 2d 170, 648 N.W.2d 402. If grounds are found by the circuit court, the parent is found “unfit,” WIS. STAT. § 48.424(4), and the case moves to the dispositional phase. *Steven V. v. Kelley H.*, 2004 WI 47, ¶26, 271 Wis. 2d 1, 678 N.W.2d 856. In the dispositional phase, the court decides if it is in the child’s best interest that “the parent’s rights be permanently extinguished.” *Id.*, ¶27; *see* WIS. STAT. § 48.426.

<sup>4</sup> To determine what disposition is in the best interests of the child, the circuit court must consider the following statutory factors: (a) “[t]he likelihood of the child’s adoption after termination”; (b) the child’s age and health; (c) whether the child has any substantial relationships with their family members and “whether it would be harmful to the child to sever these relationships”; (d) the child’s wishes; (e) “[t]he duration of the separation of the parent from the child”; and (f) “[w]hether the child will be able to enter into a more stable and permanent family relationship as a result of the termination[.]” WIS. STAT. § 48.426(3).

because it violates procedural due process by not requiring the State to prove by clear and convincing evidence—or, alternatively, by a preponderance of the evidence—that termination of parental rights is in the best interests of the child. After Carl submitted his brief-in-chief on this issue, the State and guardian *ad litem* filed a joint petition to bypass to pursue this appeal with our supreme court which then held the petition in abeyance pending its review of *State v. H.C.*, No. 2023AP1950, unpublished slip op. (WI App Mar. 5, 2024).<sup>5</sup> See WIS. STAT. RULE 809.60. Our supreme court recently issued *State v. H.C.*, 2025 WI 20, 416 Wis. 2d 233, 21 N.W.3d 330, and subsequently denied the joint petition to bypass.

In an August 14, 2025 order, this court directed Carl to inform us whether he intended to file replacement briefs or take other action in light of *H.C.* and our supreme court’s denial of the petition to bypass. Carl, via his attorney, responded that he would “not seek to supplement or replace the briefs or take any other action” in this appeal.

In *H.C.*, our supreme court held that “the best interests of the child governing the dispositional phase of a TPR proceeding constitutes a discretionary determination by the circuit court,” and that “[n]either the Due Process Clause nor applicable statutory law impose a burden of proof during the dispositional phase of a TPR proceeding.” *Id.*, ¶3. Therefore, we reject Carl’s argument that due process requires the State to prove the best interests of the child by either clear and convincing evidence or a preponderance of the evidence. Accordingly, we summarily affirm.

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<sup>5</sup> The State and guardian *ad litem* also jointly moved to consolidate this appeal with *State v. H.C.*, No. 2023AP1950, unpublished slip op. (WI App Mar. 5, 2024). Our supreme court denied the joint motion.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*